

that our country is attempting in the Seventh Fleet area, and in other developing areas of the world, is one that must measure its progress in decades at the very least.

Social progress is difficult and slow, even in civilized and literate countries. Witness our problems right here in the U. S. A. And the Christian way—the democratic way—the human way—has never been a quick one. If we could adopt the methods of totalitarianism—whether of the Communist left or the Fascist right—we could accomplish a great deal of economic and material progress very quickly. But to do that would be to deny the very ideals for which we stand and for which we are fighting.

A desirable goal, no matter *how* necessary or attractive, never justifies ruthless and inhuman means of achieving it.

Our method of achievement must conform with our principles—yes, and with our ideals.

We must, with Christian love and charity, demonstrate with precept and example that the *democratic ways* of the West are not only stronger than Communistic totalitarianism—but that they are infinitely more desirable in the long run.

As has been pointed out before, this is ultimately the war for the minds and the understanding of men. It is an extremely slow war, but it is one in which we are making progress. As time goes on, the ineffectiveness of the Communist system becomes more and more evident. The economic failures, such as Cuba—the treachery such as the Red Chinese attack on India—the abortive attempts to parlay their aid into control of the aided country such as Egypt and Iran—all of these reveal to the uncommitted nations of the world the nature of Communistic aims and methods. It is difficult to

measure the total effect of these Communist failures, because that effect takes place in the minds of men; but in spite of the difficulties of measurement, Communist failures are our victories nonetheless.

For instance, there has been a distinct change of attitude on the part of the people and the government of India since the Chinese failed to honor their common border.

Another example might be the recent change in attitude of the neutral forces in Laos, now that the Communist forces have revealed their complete untrustworthiness. It seems to me only a matter of time before every neutral country will discover that behind every promise, and every bit of Communist help, is a plan for the destruction of freedom of that country. Concurrent with disenchantment with communism will come a realization on the part of the developing nations that their only hope for progress and independence lies with the democracies of the West.

To return to our analogy of American taxpayers being stockholders in the corporation of world freedom, my report to you on our progress in the Western Pacific is not one of glowing optimism. It is, however, one of hope and encouragement.

I am reminded here of what former President Eisenhower said when he was asked how he felt about growing old.

He replied that when he considered the alternative, he didn't feel so bad about it.

Well, when we consider the *alternative* to the difficult and expensive efforts we are making around the world to curb Communistic expansion, we are soon convinced that these expensive and difficult measures aren't really so bad after all.

Cold War Education

UNDERSTANDING OF COMMUNISM IS INADEQUATE

By THOMAS J. DODD, *Senator from Connecticut*

Delivered before the 1963 Conference on Cold War Education, Tampa, Florida, June 12, 1963

GOVERNOR BRYANT, distinguished guests, one year ago this July, I had the honor of addressing a Florida State Conference on Cold War Education convened under the inspiration of Florida's great Governor, Farris Bryant. Since that time, the movement of which Governor Bryant was one of the most distinguished pioneers, has assumed nationwide proportions. The National Governor's Conference has set up a committee on cold war education; and, in recognition of his unique services in this area, Governor Bryant has been appointed chairman of this committee.

And now, at last, again under the guidance of Gov. Farris Bryant, we have a development that I have been waiting many years to see: a nationwide conference on cold war education attended by representatives of State government, by educators, by business leaders, by officers of civic organizations and by representatives of all segments of our national community.

I was particularly honored by your invitation to address you today because I consider this to be a conference of truly historic importance—a conference, indeed, which could prove to be a turning point in the cold war.

Out of the many defeats and humiliations which the free world has suffered since the close of World War II, there has at last emerged a recognition of the need for a clearer understanding of the nature of communism, of the meaning of freedom, and of the significance of the struggle in which we are involved.

No one has stated this more eloquently than President Kennedy in his State of the Union message. "It is most urgent," he said, "that the American educational system tackle in earnest the task of teaching American youth to confront the reality of totalitarianism in its toughest, most militant form, which is communism, with the fact and values of our American heritage * * *. We shall have to test anew whether a nation organized such as ours can endure. The outcome is by no means certain. The tide is unfavorable."

If the American educational system is to undertake the task of preparing American youth to deal with the menace of communism, as President Kennedy proposed, then it is imperative that our State governments assume this task as a prime obligation, as Governor Bryant has done in his own State and as several other distinguished Governors have already done in theirs. It is also imperative that our educators and community leaders should mobilize voluntarily, as you have done here today, so that the task of education on the cold war will assume the dimension of a truly national endeavor, of a partnership between community leaders and State governments and educators.

We must commit ourselves to this task of national education as though our very survival depends on it—because it does, in fact, depend on it.

We must seek to understand what we can do to halt the onrush of communism and to deal more effectively with

In addition to the four Communist nations: U.S.S.R., Red China, North Korea, North Viet Nam: the area has some seventeen other political subdivisions of various kinds. These countries are as diverse as it is possible to be, varying to both extremes of climate, topography, races, cultures, and all of the many things that make up those cultures: economy, commerce, education, religion, and so on.

And these characteristics not only vary from country to country, they vary widely within many of the countries as well. Perhaps this is the most significant realization of all. While our basic goals are consistent throughout the area, the means of accomplishing them can never be the same in any two places.

What we are attempting is to halt the flow of communism into some of the richest areas in the world. These areas are rich in mineral and agricultural resources, and, in addition, they are rich in human resources as well.

This attempt to hold communism back isn't completely altruistic. We are not there solely because we feel sorry for the poor people of these countries. And we aren't there just to frustrate the Communists for spite. Our actions are in the over-all best interests of the United States and the free world. It is a good example of what has been called enlightened self-interest.

Communism is on the march in the Southeastern Pacific. Without our help and our guidance and our strength, there is little doubt that some of these countries would soon fall. We are there to oppose this take-over for the simple reason that every piece of real estate that the Communists acquire—every bit of mineral, agricultural and human resource that they take over—makes them that much stronger.

Every step they take there puts them closer to our door. Every advance that they make in these remote areas of the world, brings them closer to their goal of world domination. And if we think the world they seek to dominate doesn't include the United States of America, and our wonderful state of Iowa, we are badly and dangerously mistaken.

Our self-interest further dictates that we do our best to protect the freedom of the non-Communist areas of the world because we need some of the resources they contain.

Further, our self-interest requires that we stem the march of communism because each area which forfeits its freedom now, must some day be wrested back at a far greater cost in effort, money and blood.

And finally, we resist the encroachments on the free areas of the world from a purely humanitarian standpoint, for we know that wherever communism goes, poverty, starvation and despotism will surely follow.

Although all of the countries that we are trying to guard in the Southeastern Pacific are not yet fully aware of it, Communist imperialism—the new colonialism—is far worse than any they have previously experienced. The tyranny and the terror that accompanies a Communist take-over is becoming more well known throughout the world. The depressed economy, the reduced production and the poverty and starvation that follow in the wake of communism are becoming more widely understood. But it is difficult for people who have known nothing but starvation and poverty all of their lives to understand that the glorious promises of communism will mean—not a betterment of their position—but rather an almost incredible worsening.

Militant communism appeals to people in these areas precisely because it promises, in glowing words, a quick and easy solution to the poverty that has existed for so long there, and which western colonialism did little to mitigate. It is difficult to persuade those who have seen the chaos that communism has brought to other countries. But to ignorant and

illiterate masses, the passionate promises of sudden utopia have an almost irresistible appeal. More than that, in opposition to the honest gradualism that the West offers, communism holds out to an aroused people not only the emotional bait of sudden riches, but revenge on those who allegedly have withheld those riches from the masses over the years.

So you can see that even though communism and its plots are our immediate enemy in the area, the real enemy is ignorance and poverty.

And in this case I mean poverty, not *only* in the ordinary sense, but in the biblical sense as well—poverty of the spirit, poverty of the will, poverty of the imagination.

To overcome the repressive customs and backward practices of centuries in an illiterate and superstitious population, starving, still oppressed by circumstances, resentfully suspicious of the white man and naturally resistant to change is an enormous problem. But we can be sure of one thing. The Communists are not dismayed by the size of the problems involved, or by their complexity. They turn these very troubles to their own advantages.

We have all heard that a little learning is a dangerous thing. In the developing areas, the Communists supply that limited learning. They show these new countries what they have missed, and point to communism as the only means of obtaining it.

It is up to us to provide the additional learning. Bound by the truth, we cannot hold out overnight riches to these new nations. We know that prosperity and a high standard of living can only be achieved slowly, by hard work and through democratic means.

In those countries where the departing western colonizers have left some degree of education—where there has been some preparation for self government—the problem is not as great. This illustrates another field of the wide variation found in the Western Pacific.

Now for a few words about another interesting discovery that one soon makes. Throughout the whole Seventh Fleet bailiwick, there are individuals of intelligence, education, culture and charm. They are, naturally, exceptions—an occasional individual among tens of thousands.

While one must remember that the well educated oriental is sensitive about the shortcomings of his country, the trap that a westerner normally falls into is to assume that their attitudes are the attitudes of all their countrymen, and to overestimate the influence that the westernized oriental can have on the affairs of his country.

Nonetheless, contacts with educated orientals can be extremely useful in understanding the problems peculiar to the countries in which they live.

In traveling in the Western Pacific, one soon learns, for instance, that what pleases one nationality or faction, may distress another. And one also learns, that while the great mass of the people in some of the areas are illiterate, the press communications between countries are rapid and articulate.

Realizing this, the business of being a constructive American influence becomes a very interesting problem in human relations—which, after all, is what diplomacy is, on a large scale.

But I suppose the thing that we as taxpayers—as stockholders in world freedom and peace—are primarily interested in is our progress.

Well, in various ways, and in various degrees, we are successfully arresting the advance of communism in the Seventh Fleet area.

Not only are we holding our own in most of these areas, I believe we are starting to roll back some of the gains that communism has made.

But I don't want my optimism here to mislead you. The job

Communist subversion and infiltration.

I believe that many of the blunders and defeats of the postwar period can be traced back to the simple fact that our understanding of communism was inadequate. This inadequacy has by no means been confined to the lay public: On the contrary, it has been an all-pervasive inadequacy from which our newspapers, our educators and our political leaders have suffered equally with the general public.

We must start with our high schools and colleges, because the graduates of today will tomorrow be our business and community leaders, our Government employees and foreign service officers. And the inexorable laws of time also ordain that, before too many years have passed, they will take over the task of political leadership from those who hold office today.

In mobilizing ourselves to provide this kind of education for the youth of today, our own generation is providing them with something which we ourselves did not have. Indeed, I strongly believe that, had courses on communism and the cold war been taught in our high schools and colleges during the thirties and forties, we would have avoided many of the mistakes that have brought the free world to its present perilous situation.

But what should we study and how shall we study?

I have examined several proposed curriculums for education on the cold war. All of them make good sense to me. But those that I have seen suffer from three important deficiencies.

There is agreement that we must teach our students the meaning of freedom and imbue in them an appreciation of the heritage of Western civilization and of the special heritage that we in America can claim as our own.

There is agreement that we should teach courses on Communist doctrine and on the history of communism. But while there is general agreement on this point, there are some who say that we must teach each subject "objectively," avoiding propaganda and the kind of mental conditioning which the Communists themselves practice in their education. I confess that I do not understand what these educators mean by "objectivity." If they mean by this that those who teach about communism must strive to maintain a neutral and dispassionate posture and must avoid condemning it, then I cannot agree with them. I have yet to come across anyone who has suggested that in teaching about Hitlerism and World War II, teachers must attempt to make a completely dispassionate presentation of the facts, and avoid anything that might be interpreted as a condemnation of nazism.

If a teacher sets forth the facts about the Red terror in the Communist countries, about the liquidation of the political opposition, about the man-made famines and the forced collectivization of the peasants, about the forced labor camps, about the brainwashing, about the total denial of human rights, about the campaign against religion, about the obscene confessional orgies that pass for trials in Communist countries—if a teacher sets forth all of these facts objectively and without exaggeration, then it is nonsense to talk about "dispassionate presentation" or about "avoiding condemnation."

Communism stands condemned by the unadorned facts of its own history. One would have to be somewhat less than human to remain cold and dispassionate about the inhumanity of communism, and the artificial quest to avoid the condemnation of these crimes, would, as I see it involve an abdication of the moral responsibility to condemn.

There is general agreement that instruction should include special consideration of Communist policy and action in the Far East, of Castro communism and the threat to the Americas, of Soviet policy generally in the underdeveloped countries, of

current crises in world affairs, and of more effective methods of countering the attacks of international communism.

With all of these proposals, I am in agreement. And yet I believe that if we confine education on the cold war to the subject headings suggested by such curricula, the coming generation will go on blundering and retreating and conceding as their fathers have done in this generation, because they still will not be equipped to cope with the infinitely subtle and infinitely varied attacks of international communism.

In situation after situation, the Communists have achieved victory by dividing Western public opinion and thus inactivating Western policy or, better still, by completely befuddling Western opinion so that the Western nations wound up by doing precisely what the Communists wanted them to do.

If the youth of today are to escape the befuddlement which plagued their elders at recurrent intervals, it is essential that all of the well intentioned blunders of the postwar period be subjected to merciless examination in the classrooms.

Let me give you a few examples of situations in which the West has believed what the Communists wished it to believe or has done what the Communists wished it to do.

After the expulsion of the Nazis from Greece in 1945, the Communist EAM staged an uprising and embarked upon the indiscriminate slaughter of anti-Communist civilians. Thanks to the vigorous and courageous intervention of Churchill, Greece was saved from the clutches of the EAM and the Kremlin. But if you look back through the press of the period, you will find that our Government and a great majority of our newspapers berated Churchill for intervening in Greece, apparently in the belief that the EAM was simply a united front anti-Nazi resistance movement. Today, of course, everyone agrees that Churchill did the right thing in Greece. But we must ask ourselves how it came about that Churchill's action at the time encountered bitter opposition from the American Government and the American press which should have supported him.

An even more dramatic example of Communist manipulation of Western opinion and Western policy is provided by Yugoslavia. During the war in Yugoslavia there were two resistance movements—the Chetnik movement led by Gen. Draza Mihailovich and the partisan movement under Communist control, led by Josip Broz Tito. Until mid-1943, Britain and the United States supported General Mihailovich, and the Anglo-American press portrayed him as the foremost hero of the anti-Nazi resistance in occupied Europe. Toward the end of 1943, Britain and America, for obscure reasons, abandoned Mihailovich and shifted their support to Tito. In conformance with this policy, the allied press turned a complete somersault. Tito now became the foremost hero of the anti-Nazi resistance, and stories were put out that Mihailovich was, in fact, collaborating with the enemy.

In supporting Tito, Britain and America had no intention of communizing Yugoslavia. Apparently they believed the nonsense that Tito's movement was a national movement and not a Communist movement; and apparently they accepted his assurances that he had no intention of communizing Yugoslavia. But the hard fact remains that communism was imposed on the Yugoslav peoples not by the partisan movement and not by the Kremlin or the Red army, but by the two great democratic powers, acting in united confusion. We armed Tito's forces; we airdropped supplies to them when they were attacking the nationalist forces of General Mihailovich; and we converted the British Broadcasting Corporation, the Voice of America, and the Allied press into Titoist propaganda organs.

Today we ask ourselves how this incredible perversion of

Allied policy came about. Part of the answer, I am certain, is provided by the fact that the chief of British Balkan intelligence during World War II, a certain Maj. James Kluggman, later emerged as a member of the executive committee of the British Communist Party. But this is only part of the answer. If Allied intelligence on Yugoslav was falsified, as we now know it was, we must still ask ourselves how it came about that so staunch a conservative as Prime Minister Churchill accepted the falsifications without challenge, and how Churchill and the Allied press fell for the myth that the Tito movement was a representative national movement which would not communize Yugoslavia.

Our China policy disaster must be chalked up as another major success for the Communist apparatus of confusion. If you look back through the press and periodicals of the period, you will find that the only books on China that became best sellers were those which described the Chinese Communists as agrarian reformers and Chiang Kai-shek as a completely corrupt tyrant. There were major articles in major periodicals that told the same story. The story was further confirmed by repeated editorials in eminently respectable newspapers. And, finally, this evaluation of the situation in China was given currency at the highest level of government by the supposedly learned reports of the Institute of Pacific Relations, with its Wall Street financing and its impressive liberal-conservative membership.

Today we know how completely false this evaluation was. But over a period of years it was repeated so frequently by so many respectable people that even staunch conservative anti-Communists like Ambassador Hurley, accepted this evaluation as accurate until bitter experience taught them otherwise.

Our own befuddled acceptance of the "agrarian reformer" myth was perhaps more responsible than any other single factor for the Communist triumph in China and for the catastrophic penalty we have had to pay and will have to pay in the future, to prevent the Chinese Communist hordes from overrunning Asia.

We must ask ourselves how we blundered in China, and how we came to believe a myth which common sense should have told us was a perversion of reality.

I could extend this list for many hours. But let me confine myself to one other situation in which the Communist apparatus of confusion and befuddlement has scored a signal triumph.

When Prime Minister Castro was striving for power, articles appeared in some of our leading newspapers informing the American people that, far from being a Communist, Fidel Castro was a modern blend of Thomas Jefferson and Robin Hood. Those responsible for the conduct of our foreign policy were similarly informed by subordinates at desk positions that there was no proof that Fidel Castro was a Communist or that his movement was Communist dominated—despite the fact that warnings were on file from many of our Ambassadors in Latin America and from various elements of the intelligence community.

As a result of this misreading of the nature of the Castro movement, Castro was permitted to raise funds and ship arms from the United States without interference, and at the critical juncture the State Department moved to precipitate the downfall of Batista before a non-Communist alternative to Batista had been prepared. In a very real sense, therefore, America made itself responsible, despite its intentions, for the introduction of communism to the Western Hemisphere.

Once again, we must ask ourselves how it came about that American editors, American officials and the American public were so befuddled about the situation in Cuba, that we wound up by doing precisely what the Communists wanted us to do.

I come back to the point that if we are to avoid repeating the errors of the past, we must submit these errors to an utterly frank and non-partisan examination. I believe that the study of our foreign policy failures in the postwar period, on a case-history basis, constitutes an essential ingredient of a program of education for survival in the struggle against world communism.

This leads me to my next point. I believe that the American people, the American press, and the American Government would not have blundered in so many situations if our educational system had placed more emphasis on teaching people to think independently, had it placed a higher premium on the development of our critical faculty. There has been too great a tendency on the part of the public to accept what their newspapers tell them; too great a tendency on the part of our newspapers to guide themselves by information from official sources; too great a tendency on the part of our policymakers to be guided by position papers developed at various desks; and too great a tendency on the part of subordinate officers at desk positions to conform to official policies, once they have been established as policies.

Instead of placing a premium on independence, on dissent, and on critical analysis, the present tendency is to place a premium on conformity.

I cannot place too much emphasis on the importance of encouraging our students to think for themselves, to endeavor to get their information from a variety of sources, to weigh conflicting viewpoints where conflicting viewpoints exist, and to develop their own viewpoints where the positions taken by the press and officialdom do not satisfy them.

This proposal is not merely in harmony with our democratic traditions and with the religious belief in the dignity of the individual, but more than this, it may very well be a condition of our survival as a nation.

When we have a public that has been taught to think critically, we shall soon have a foreign service and other Government departments manned by personnel who consider it their prime duty to think and to speak independently on the issues that are presented to them.

I come now to my final proposal.

Ours has been an easy-going, affluent, hedonistic society. We teach our youth what is right and what is wrong. On the whole, our youth is law-abiding and morally disposed. But their morality is all too frequently of the passive variety which simply avoids wrongdoing, rather than of the active variety which looks upon moral precepts as a guide to every day conduct, and which calls for dedication and self-sacrifice.

A passive morality will not suffice in the struggle against the forces of world communism. The essential strength of the international Communist conspiracy lies in the total commitment of its members to the objective of a world Communist society. They do not work at this objective part time, but every hour of every day. In the service of evil, they dedicate the whole of their lives.

I believe that our education for the cold war must have a moral function. I believe that it must call upon our youth for self sacrifice; that it must instill in them a spirit of total dedication to match the total dedication of the Communists; that it must encourage them to think of ways in which they can translate their anti-Communist and pro-democratic beliefs into concrete action.

I know that this can be done. I know that it can be done because even in the absence of an organized educational program, the young people of our country have in many instances already displayed this kind of dedication and this kind of enterprise.

One of the most dramatic programs for countering Com-

munist influence in Latin America was conceived right here in Florida under the auspices of the *Miami Herald*. It is called Operation Amigos.

Operation Amigos brings plane-loads of Latin high school students, carefully selected for their leadership qualities, to Florida for periods of 2 weeks, during which they live in the homes of their fellow American students, attend classes and all school activities. Then American students go to Latin America to return the visit. The *Herald* employs a full-time coordinator who spends half his time in the Latin country selecting and preparing the students, and the other half preparing the American community to receive them. When the first plane-load of Ecuadoran students arrived for their stay in Cocoa, Fla., the Cocoa High School student body and band met them, singing the Ecuadoran national anthem in Spanish. By the time the youngsters' stay was done they had developed such ties that there was hardly a dry eye to be found on either side upon parting.

Now other newspapers, including the Scripps-Howard chain, have begun to follow the *Miami Herald* example and sponsor Operation Amigos exchanges.

Given an educational program which teaches the history and meaning of freedom and the history and meaning of communism, given a program which inculcates in our young people a spirit of dedication and self-sacrifice and which teaches them the art of thinking for themselves, I feel confident about the future of America. I feel confident, indeed, that it will not be too many years before we shall be able to mount a crusade for freedom that will shake the Communist world to its very foundations.

Given such a program, I am convinced that victory in the cold war will ultimately be ours.

Governor Bryant, again I want to compliment you and thank you from the bottom of my heart for your magnificent initiative.

The Common Law

CAPACITY TO ADJUST TO CHANGING CIRCUMSTANCES

By ARTHUR LEHMAN GOODHART, K.B.E., Q.C., *University of Oxford, England*

Delivered at a banquet in honor of the Supreme Court of the United States given by the American Judicature Society in Washington, D. C., May 22, 1963

MR. CHAIRMAN, Mr. Chief Justice Warren, Justices of the Supreme Court, Ladies and Gentlemen: All the way across the Atlantic I have been practising not to say "Lord Chief Justice." When Lord Chief Justice Goddard and I came over for the John Marshall celebrations at William and Mary nine years ago, we drove from Richmond to Williamsburg. As we approached Williamsburg there was a large poster which read: "Chief Justice go home." Lord Goddard turned to me and said: "Good heavens, they must have been reading some of my judgments."

I am particularly glad to be here as two of the justices, Mr. Justice Harlan and Mr. Justice White, are Oxford men. Mr. Justice Felix Frankfurter was a distinguished visiting professor there for a year. While at Oxford he persuaded all his fellow professors to go with him to the famous Derby horse race at Epsom. Thereafter he seems to have succeeded in transferring this sporting spirit to the Supreme Court because, as I understand it, the odds on any Supreme Court opinion are now quoted as five to four against.

May I add that the United States owes a great debt of gratitude to Oxford because Lord North was an Oxford man.

The editorial preface to the admirable Golden Anniversary issue of the *Journal of the American Judicature Society* states that the Supreme Court of the United States is "the greatest judicial tribunal the world has ever known." I agree with this, but I hope that my fellow Benchers at Lincoln's Inn will not hear of this as they might disbar me. Such an action by the integrated English bar would, I am sure, not surprise my old Yale friend and colleague, Mr. Justice Douglas.

I do not think that anyone can question the primacy of the Supreme Court because no other court has ever had so much power. Great as it is, the House of Lords as a court could be abolished tomorrow without seriously affecting the British system of government, but if the Supreme Court were to be abolished, then the whole Constitution would come to an end. The essential difference is that the Supreme Court can hold

Federal and State statutes unconstitutional: the House of Lords has no similar power because there is no British Constitution. What Parliament says is binding on all judges, and there is nothing more to be said about it. Judges, however, usually manage to get their own way: the House of Lords has been able to attain some of the same results which, in the United States, are achieved by the first ten Amendments. By a convenient fiction it assumes that Parliament always intends that its statutes will accord with natural justice; no statute will therefore be construed to be retroactive or to deprive a person of a fair hearing or to prevent freedom of speech unless Parliament has so provided in the most specific terms. Only last month the House of Lords in *Ridge v. Baldwin* [1963] 2 W.L.R. 935, held that where a statute gives a Police Watch Committee the power to dismiss any constable whom it thinks is unfit for the discharge of his duties, there is an implied term that he must be given an opportunity to be heard. Lord Reid said: "The principle *audi alteram partem* goes back many centuries in our law . . . In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist." A similar view was expressed by one of my pupils some years ago; in answering an examination question he wrote: "In this case you cannot draw a line anywhere, therefore you must draw a line somewhere."

The Supreme Court is not only more powerful than is the House of Lords: it also seems to me to be more efficient because it is not absolutely bound by its own precedent decisions. This does not mean that it is free to disregard them because, as Dean Pound has said, this would lead to "cadi justice," but it can depart from them if it is clear that they have been based on some error of fact or of principle. Unfortunately in 1898 the House of Lords in *London Street Tramways Co. v. London County Council* [1898] A.C. 375 held that it was absolutely bound by its own prior judgments

and would never reconsider them. This is highly inconvenient because it means that precedents must be analysed in the greatest detail, as it is not always crystal clear what the judges in the prior case meant to say. As oral arguments are not given a time limit in the English courts, such an analysis may go on for a long time. Thus in a case where counsel had been arguing such a point for two days he said: "My Lord, I trust that I am not trespassing on your patience." His Lordship replied: "Mr. Smith, you trespassed on my patience yesterday. Today you are encroaching on eternity."

This absolute doctrine has also been contrary to the spirit of the common law. Sir Frederick Pollock, who disliked all absolutist rules, said in his lectures at Columbia on *Our Lady The Common Law* that the strength of the common law lay in its capacity to adjust itself to changing circumstances, just as a reasonable man will be guided by changing facts. As an illustration of this, he pointed out that the common law has never recognised an absolute right of freedom of speech. He said: "What she does care for is that government, whatever its forms, shall be lawful and not arbitrary."

Only a fortnight ago the House of Lords re-affirmed this principle in *Jordan v. Burgoyne* [1963] 2 W.L.R. 1045, when it refused leave to appeal from a decision of the Court of Criminal Appeal. The defendant, the leader of a small Fascist group, addressed a public meeting in Trafalgar Square in July 1962. In his speech he said: "More and more people every day . . . are opening their eyes and coming to say with us Hitler was right." When the crowd, which was largely hostile, began to riot, the police had the greatest difficulty in restoring order. Thereafter the defendant was convicted of an offence under s. 5 of the Public Order Act, 1936, which provides in part that: "Any person who . . . at any public meeting uses threatening, abusive or insulting words . . . whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence." He was sentenced to two months in prison. The Court of Criminal Appeal affirmed the conviction; Lord Parker, the Lord Chief Justice, said: "An attempt has been made to elevate this case into a cause célèbre in the sense that, if he [the defendant] is convicted, then there is some inroad into the doctrine of free speech. It is nothing of the sort. A man is entitled to express his own views as strongly as he likes, to criticise his opponents, to say disagreeable things about his opponents and about their policies, and to do anything of that sort. But what he must not do is—and these are the words of the section—he must not threaten, he must not be abusive and he must not insult them, 'insult' in the sense of 'hit by words.'" The court recognised, as Lord Chesterfield once said, that "an injury is much sooner forgotten than an insult." I once heard ex-Chancellor Bruning say at a lecture at Oxford that it was a mistaken interpretation of freedom of speech that had led to the breakdown of the German republic and the establishment of Hitlerism. The *Jordan* case has made it clear that such a mistake will not be made again, as far as the English courts are concerned.

This evening we are celebrating in particular the contributions that the Supreme Court has made to administration and procedure. At first sight those two subjects do not promise to be exciting, but they are the centre and the life of the common law. Three years ago the Law Quarterly Review published a series of brief articles entitled *The Migration of the Common Law*, and in every instance—the United States, Canada, Australia, Ireland, India, and Israel—it was the principles of procedural law which were recognised as being the essential elements which had crossed the oceans.

The golden thread of this procedural law is the concept of the fair trial. In those three words "*the fair trial*" we can

sum up the outstanding contribution that the common law has made to civilization. It depends on three things: first, an impartial judge, secondly, and independent and courageous bar, and thirdly, efficient and rational rules of practice and evidence.

The first essential is an impartial, independent judiciary. Here the common law has had the most extraordinary good fortune. When the courts were first established the King chose his judges from learned clerics, such as the great Bracton, or from his civil servants attached to the court. But when the Church forbade the clergy to be judges a new source had to be found. It could not be found in the universities because English law was not being taught there. The King therefore began to choose his judges from the leaders of the bar in the 14th century, and this became a fixed rule a hundred years later. This is of the utmost importance because, as Professor Plucknett had said in his *History of the Common Law*: "If the judges had continued to be members of the civil service . . . we should have had in England (and probably in America too) something like the system prevailing in several continental countries today."

The great thing is that since the 15th century our judges have been independent. They are the representatives of the King, but not his servants. No one can tell them how they should decide a case because they are essentially the servants of the law. This independence of the judges is now part of the American tradition, and the most essential part of it.

These judges are independent, but they are never arbitrary. There are three things in the common law system that prevent this. The first is that the judges sit in open court; there is no secret evidence and no secret arguments to which they can listen. Each side knows what the other has said to the judge. The second point of great importance is that the judges give reasons publicly for their judgments. They are a body of experts explaining to a body of experts why they have decided as they did. The third point is that the judges act not as a body, but as individuals. Each one is free to dissent. They are thus each other's severest critics. At the time of Queen Victoria's Jubilee the English judges decided to send her an address of congratulations. The first draft began with the phrase "Conscious as we are of our infirmities." Lord Bowen objected to this as being inaccurate. He said it should read: "Conscious as we are of each other's infirmities." A court in which the judges are conscious of each other's infirmities is a healthy court because it is the most certain guarantee that both sides have been given a fair and adequate hearing. I am convinced that this system of independent, but responsible judges is the foundation on which our whole system of government is based. Any attempt to substitute for judicial administration of the law some form of what is called popular justice would be a violation of everything that our glorious history of freedom has taught to us.

Only once in English history did this common law system break down,—during the Stuart period in the 17th century. The names of some of those judges,—Bloody Jeffreys and the egregious Scroggs,—have remained infamous ever since. The famous Bill of Rights of 1689 finally established the independence of the judges by providing that they should hold office not by favour but during good behaviour; it is fitting that the first ten amendments to the American Constitution have been called the American Bill of Rights. In the great address which Chief Justice Warren delivered on 27th April at Duke University he emphasised that our cherished freedoms depend on the Constitution. He concluded in these words: "Surely the Constitution should be as precious to us now as it was then. If lawyers are not to be the watchmen for the Constitution, on whom are we to rely?"